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IN THE

Supreme Court of the United States

October Term, 1975
No. 74-1540

HAVEN ERICKSON, WILLIAM L. KLINGAMAN, RAY S. MCKNIGHT and JAMES O. PAUTZKE, Trustees of the Washington State Plumbing and Pipefitting Industry Health and Welfare Trust,
Defendants-Petitioners

and

WASHINGTON STATE ASSOCIATION OF THE UNITED ASSOCIATION, a labor union, and the WASHINGTON STATE EMPLOYERS COUNCIL FOR THE PLUMBING AND PIPEFITTING INDUSTRY, an employer association,
Additional Defendants-Petitioners,

v.

WILLIAM J. ALVARES, WILLIAM BADEN, BERNARD BROMLEY, VICTOR R. CHARCRAFT, ALBERT D. ERDMAN, ERNEST E. GRAVES, J. W. JENSEN, MILO E. KROLL, HAROLD L. SHIPMAN, JAMES M. SMITH, AUSTIN SOFIE, DANIEL B. SWEENEY, NORMAN W. SWENSON and JAMES R. YATES, individually and as representatives of a class of persons hereinafter described,
Plaintiffs-Respondents,

and

THOMAS ALBRO, WILLIAM BOTTING, PAUL HOLMES, JOSEPH MCCAFFREY, DELL PETERSON and DALE SMITH, Trustees of the Seattle Area Plumbing and Pipefitting Industry Health and Welfare Trust,
Nominal Plaintiffs-Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TABLE OF CONTENTS

Page

The Petition For a Writ of Certiorari Should Be Denied. This Is Not a Case of "First Impression" Nor Does It Involve An Issue of "Significance" 1

TABLES OF AUTHORITY

Statutes

Pub. L. 93-406, 88 Stat. 829, Employee Retirement Income Security Act of 1974,

Sec. 502 4

Sec. 502(a)(1)(B) 3

(2) 3

(3) 3

Sec. 502(e)(1) 3

Sec. 514(a) 3

29 U.S.C.,

Sec. 185(a), Taft Hartley Act, Sec. 301(e) 2, 3, 4

Sec. 186(e), Taft Hartley Act, Sec. 302(e) 2, 3, 4

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THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED. THIS IS NOT A CASE OF "FIRST IMPRESSION" NOR DOES IT INVOLVE AN ISSUE OF "SIGNIFICANCE"

This litigation, initiated in the United States district court for the Western District of Washington, involves a claim by

BLEED THROUGH

members of Plumbers Union Local 32,[1] of Seattle, Washington, for a share of the uncommitted reserves of the Washington State Plumbing and Pipefitting Industry Health and Welfare Trust, a joint labor-management trust fund in which such members formerly participated. The facts giving rise to the litigation are fully set out in the opinion below (Petition, pages A-2 to A-4).

The jurisdiction of the district court was invoked under Sections 301(a) and 302(e) of the Taft-Hartly Act (29 U.S.C. Secs. 185(a) and 186(e)) but the district court dismissed, holding that neither section was applicable (Petition, pages A-18 to A-19).

The Ninth Circuit reversed, finding federal court subject matter jurisdiction under both Sections 301(a) and 302(e) (Petition, pages A-5 to A-17). The cause was remanded for further proceedings (Petition, page A-17).

Petitioners' main argument, in seeking a writ of certiorati, in that this is a case of "first impression" involving the "highly significant issue" of the extent of federal jurisdiction in cases dealing with welfare or pension plans.[2] It is asserted:

> "The Court of Appeals' holding, if allowed to stand, would extend federal jurisdiction into areas of labor-management relations in which the participation of the federal courts is unnecessary, the parties having an adequate forum in the state courts" (Petition, page 9).

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1. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local 32.

2. This argument is developed in Parts I and II of the Petition (pages 9-15). Parts III and IV (pages 16-21) assert two additional reasons why certiorari should be granted, both of which appear as meritless afterthoughts, and to which no response is needed.

This is not a case of "first impression". The exercise of Section 301(a) and 302(e) federal court jurisdiction, to resolve controversies involving labor-management welfare or pension plans, has been recognized or approved in numerous district court and Court of Appeal decisions, all of which are cited in the thorough opinion of the Court below.

Further, if there were any doubt as to the intent of Congress with respect to the use of the federal forum in welfare or pension plan disputes, that doubt has been resolved through the passage of the Employee Retirement Income Security Act of 1974 (Pub. L.93-406, 88 Stat. 829). Section 502(a)(1)(B) of the new law provides that a plan participant or beneficiary can bring an action "to recover benefits due to him under the terms of his plan,[3] to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan"; Section 502(a)(2) provides that a plan participant or beneficiary can bring an action for redress of breaches of fiduciary responsibility by those fiduciaries who administer his plan; and Section 502(a)(3) provides that a plan participant or beneficiary can bring action to enjoin any act in violation of the statute, or of a plan, or to obtain appropriate equitable relief. Section 502(e)(1) gives federal district courts jurisdiction over all such actions. Additionally, Section 514(a) provides that ERISA pre-empts all state laws relating to employee benefit plans. As stated in the opinion below:

> "We conclude that the court did have jurisdiction under both Sec. 301 and Sec. 302(e). Our reluctance to hand down a decision that appears to enlarge the

3. "Plan is defined as meaning an employee welfare plan or an employee pension plan (Section 3 (3)).

BLEED THROUGH

> jurisdiction of the federal courts—to "fire a jurisdictional cannon which will be heard on future battle grounds" (Goldberg, J., in *Mumford v. Glover*, 5 Cir., 1974, 503 F.2d 878, 880)—is somewhat diminished by the action of the Congress in adopting the Employee Retirement Income Security Act of 1974 (Pub. L.93-406, 88 Stat. 829). That Act imposes very broad jurisdiction upon the federal courts in cases involving welfare trusts such as those involved here, Sec. 502, and broadly supersedes, effective January 1, 1975, otherwise applicable state laws, Sec. 514. If we are firing a cannon, the Congress has blown up a dam." (Petition, page A-5).

The action of Congress in providing, in Section 502 of ERISA, broad federal court jurisdiction over controversies concerning welfare and pension plans effectively moots Petitioners' claim that the Taft-Hartley Section 301(a) and 302(e) jurisdictional issues involved in this case are "significant" enough to command the attention of this Court. Jurisdiction of future federal court actions asserting claims of the nature set out in the instant litigation will rest primarily, if not exclusively, on Section 502 of ERISA, rather than on Sections 301(a) and 302(e) of Taft-Hartley. The Section 301(a) and 302(e) issues involved here are not of a continuing or recurring nature. A decision of this Court as to these issues will benefit only the immediate litigants.

There are no "special and important reasons" compelling a review of the opinion below. The petition for writ of certiorati should be denied.

Respectfully submitted,

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